

Exhibit A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

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OCCIDENTAL CHEMICAL
CORPORATION,

Civil Action No.
2:18-11273(MCA)(JAD)

Plaintiff,

v.

STATUS CONFERENCE

21ST CENTURY FOX AMERICA,
INC., et al.

Defendants.

COPY

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B E F O R E:

THOMAS P. SCRIVO, ESQ. Special Discovery Master

O'Toole Scrivo Fernandez Weiner Van Lieu, LLC
14 Village Park Road
Cedar Grove, New Jersey 07009

TRANSCRIPT OF CONFERENCE as
reported by NANCY C. BENDISH, Certified Court
Reporter, RMR, CRR and Notary Public of the
States of New Jersey and New York, conducted
virtually via Zoom Videoconference on Tuesday,
July 13, 2021, commencing at 1:00 p.m.

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1 court aptly anticipated, as did we, that the
2 date scramble could become in itself an excuse
3 not to proceed with discovery.

4 So, some clarity on what the
5 Special Master has in mind there with regard to
6 deposition scheduling is helpful because I don't
7 think it's practical for us to say "Mother, may
8 I" to 155 parties.

9 MR. SCRIVO: And I think the other
10 issue, and I'll hear from you, Jeff, but I think
11 the other issue at play here is the issue of
12 cross-claims that was raised by Oxy and whether
13 parties that don't have cross-claims against a
14 party whose witness is being deposed have a
15 right to adjourn or say they can't make it and
16 as a result that deposition doesn't take place.

17 OxyChem has in its submission
18 proposed a date certain by which cross-claims
19 would be asserted. I don't believe that the SPG
20 letter addressed that issue, which is fine, and
21 I don't know if you have a position on that,
22 which I'm not calling on you now to put you on
23 the spot. I think that's tied to this issue as
24 well; maybe not directly, but it's out there.

25 MS. HENIG-ELONA: May I say

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1 was talking about Houghton still.

2 MR. McDERMOTT: I would note for
3 the record, Lee, that we got dates from
4 Houghton, which is in your group. We picked one
5 of those dates. You, liaison counsel for
6 Houghton, were one of the counsel to object to
7 the date going forward.

8 We can't make sure the defendants
9 are communicating within their own liaison
10 groups, as well as select the date that's
11 convenient to us and basically do every part of
12 the scheduling. We can pick from the dates that
13 are provided to us.

14 MS. HENIG-ELONA: Yeah, but that's
15 not what the protocol says. You have to do what
16 the protocol says, regardless of whether a party
17 says I'm available May 1st. That doesn't mean
18 liaison counsel is, and you need to involve us
19 regardless of whether the date is good for you
20 and the witness.

21 So the point is that if we just
22 follow the protocol, I think we're going to be
23 okay.

24 MR. SCRIVO: I think we all agree
25 that the protocol has to be followed.

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1 something on this issue?

2 MR. SCRIVO: Yes, Lee.

3 MS. HENIG-ELONA: I think the
4 Houghton example is a good example of how things
5 are supposed to work. The Houghton deposition
6 did not get scheduled in accordance with the
7 protocol and, therefore, when the defendants
8 said we'd like to participate, they had not been
9 given the opportunity before it was scheduled,
10 as they should have under the protocol, and yet
11 everyone was able to work together to make it
12 happen.

13 So, you know, if Oxy just follows
14 the deposition protocol, I think it will be
15 fine. We will be able to manage depositions.

16 MS. PATRICK: Well, in fairness,
17 we followed the deposition protocol, requested a
18 meet and confer on dates, didn't get them and
19 issued notices.

20 MS. HENIG-ELONA: No, you didn't
21 because no one knew about it except Houghton.
22 And you're supposed to notice liaison counsel --

23 MS. PATRICK: Lee, I was talking
24 about as to these 14 depositions.

25 MS. HENIG-ELONA: Oh, yeah, no, I

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1 Regardless of what occurred with Houghton or
2 these others, the protocol has to be followed.
3 I think I've made myself clear on that. People
4 can't seek refuge behind the new parties so as
5 to not follow the protocol.

6 There needs to be -- and look,
7 it's written, as Kathy said, there'll be
8 hearings or there won't be, but there will be
9 depositions that are scheduled. I'm certain
10 that at the next conference, if we have
11 depositions that are scheduled, there might be
12 some parties who weigh in and say it's not yet
13 ripe, we've done this, we've done that, we filed
14 this motion or that motion, and we can address
15 that as it comes. But I want to see the
16 deposition protocol followed and get depositions
17 scheduled.

18 MR. TALBERT: Special Master, if I
19 may, I don't have an answer to you right now on
20 the cross-claim deadline. That was just in the
21 agenda letter, so I haven't had a chance to
22 confer with my clients on that.

23 I will tell you that OxyChem is
24 not following the protocols and Ms. Patrick has
25 already misstated what the protocols require, in

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1 probably more ways than I'm able to go through
2 just in this oral presentation. I can follow up
3 by letter, if that's helpful. But they also
4 have misstated PBSC's position with respect to
5 their involvement in meet and confers and these
6 depositions go forward.

7 The reason that's important
8 substantively is that for a significant number
9 of the parties, their tie to the river is
10 derivative of PBSC and the municipalities. And
11 the allegations that are made in the third-party
12 complaint relate to claims of discharges to the
13 PBSC or municipalities; and then combine sewer
14 overflows or bypasses from those municipalities
15 or PBSC, which is how the material would then
16 reach the river. And so that's why PBSC is
17 interested in being involved in these
18 depositions.

19 I think it's important for you
20 just to understand the way this is played out
21 and why it has rubbed parties the wrong way and
22 they're upset by the way that this has played
23 out. PBSC and the municipalities right now, by
24 stipulation, are supposed to respond to the
25 complaint on August 15th. So they will be in

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1 the case shortly, you know, within the next 30
2 days or so.

3 Once they're in the case,
4 obviously the protocols require consultation
5 with them. Section A-2 requires consultation
6 with the parties, either by liaison counsel or,
7 if they're unrepresented by liaison counsel, to
8 include them in the conversation, the reason for
9 scheduling.

10 What happened was Oxy sent a
11 letter on June 21st. What they said was they
12 would give dates for parties to consider by June
13 30th. And then they asked for a meet and confer
14 on July 6th.

15 So, true to form, July 30th came
16 and there were no dates provided. On July 2nd,
17 Friday before the 4th of July weekend, they sent
18 dates over. We considered canceling the call or
19 moving it because of the late notice, but
20 decided that it made sense to have some
21 conversation about scheduling and the way that
22 the protocols work because many of the dates
23 that Oxy put in their proposed dates did not
24 comply with the protocol.

25 They also misstated that in their

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1 addenda letter, which is confusing because
2 obviously they're smart lawyers, they know what
3 the protocol says. It says 90 days from the
4 notices, when the notices are issued. That's
5 not September 20th, as they said in their agenda
6 letter.

7 There was also no indication in
8 the letters themselves for that meet and confer
9 that they had, in fact, conferred with
10 third-party defendants which, you know, coming
11 into the case the interest by the rest of the
12 parties is to not reopen depositions, right, to
13 do this once and coordinate. Especially since
14 they're coming in within the next 30 days or so.

15 There's also significant
16 outstanding discovery, as you know. So we are
17 waiting for responses to these discovery ESI
18 requests and instead of that got a request to
19 meet and confer on depositions.

20 When we got on the call, counsel
21 for Oxy started cross-examining SPG members
22 about the dates and when the response was, hey,
23 we need to confer with our clients, there was
24 literally screaming that the parties were
25 blocking and stonewalling OCC from taking

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1 discovery. And then when OCC was asked as a
2 threshold matter whether they'd included all the
3 parties that were supposed to be included in the
4 protocol, including PBSC and the municipalities,
5 there was a representation that they had spoken
6 with PBSC counsel and PBSC did not object to
7 completing moving forward with defendant-focused
8 discovery and that the clock is ticking, we need
9 to move on.

10 We subsequently understand that
11 that was not accurate. PBSC counsel stated
12 that, in contrast, they object to the
13 depositions being scheduled without them at
14 least having an oar in the water and being
15 involved so that they can participate
16 meaningfully. And, instead, Oxy doubled down.

17 Once they heard that, they went
18 ahead and issued the notices to parties on July
19 12th. And then PBSC responded again, as you
20 know, on July 12th saying that they wanted to be
21 clear that they opposed that discovery before
22 they're even in the case and had any opportunity
23 to be consulted.

24 That's not to say that, you
25 know -- my understanding of their basic request

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1 is that they be included and involved in the
2 process and have an ability to meaningfully
3 participate.

4 So, what we think is most
5 appropriate at this point in time, given what's
6 happened -- and, you know, we're concerned by
7 the failure to follow the rules, we're concerned
8 about the representations that were made that we
9 subsequently learned were not accurate, and we
10 think that these things should be done right and
11 in accordance with the protocol, and that means
12 including the parties that come into the case.
13 Not indefinitely, but at least including them in
14 the scheduling process.

15 MR. SCRIVO: Well, look, I'm not
16 going to get involved in what conversation
17 occurred between Mr. (Inaudible) and Ms. Patrick
18 on a phone call that's been clarified by PBSC's
19 counsel in a subsequent letter and all of that.
20 I'm not getting involved.

21 Counsel for PBSC did request that
22 this issue be visited once all the parties have
23 at least appeared or had the opportunity to
24 appear by August 15th, so sometime after August
25 16th. We certainly know that there is a

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1 days from July 6th, not 15 days from June 21st.
2 So that goes out to July 21st.

3 And so we received a letter, as
4 did other people who received the subpoenas, a
5 couple days ago, and let me just read you
6 something from the letter. So it says, this is
7 from Ms. Patrick:

8 "OxyChem remains willing to
9 discuss timely, agreeable alternative dates with
10 any defendant whose deposition has been noticed.
11 Accordingly, if any defendant noticed for
12 deposition agrees to provide an alternative and
13 mutually agreeable convenient date for its
14 deposition by July 21st, 2021, OxyChem will
15 substitute that date. Otherwise all parties
16 should expect these depositions will proceed on
17 the dates selected in the enclosed notice."

18 That is fine with me as far as
19 scheduling. What I heard today, and I just want
20 to seek clarity, is now we have like two days to
21 bring an issue before the Special Master, and I
22 just would like clarity on which one of those
23 two things. Do we have the ability to try to
24 agree on dates or provide alternate dates before
25 July 21st, or do we have two days to bring like

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1 scheduled conference on August 25th. I suspect
2 that this issue of depositions will be something
3 that is discussed in terms of a global
4 discussion. Don't want to get into the
5 nitty-gritty as to whether deposition protocol
6 has been complied with, hasn't been complied
7 with, whether the notices were held, whether the
8 timing was such that it was sent out on the
9 Friday before 4th of July.

10 Let's just get to scheduling
11 depositions under the protocol. Let's get along
12 and let's do that. And then when the parties
13 all get in, if there is some issue that's going
14 to be raised by PBSC, the municipal parties, as
15 to why depositions should not take place, then
16 I'll hear it. But until then, let's follow the
17 protocol and get the depositions going.

18 MS. WILMS: Special Master, this
19 is Nancy Wilms. I have never spoken on one of
20 these before. I just would really appreciate
21 some clarity, because I've heard a couple of
22 different things.

23 My understanding of the protocol
24 is that it allows dates to be provided within 15
25 days from the meet and confer. So that's 15

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1 an impasse thing before the Special Master?
2 That's all I want to know.

3 MR. SCRIVO: That's a fair
4 question, Nancy. I thought Kathy you said --
5 obviously your letter says what it says. I
6 thought I heard you say July 21st, but why don't
7 you just clarify.

8 MS. PATRICK: Our position is that
9 the notices, once issued, they have five days to
10 raise it. But we also said in the letter that
11 if people give us mutually agreeable dates by
12 July 21st, we will substitute those. So, I'm
13 not going to tell Ms. Wilms or anybody else that
14 if they don't, in the next two days, file
15 something with the Special Master that we will
16 not talk about them with regard to mutually
17 agreeable dates by July 21st.

18 So, to those defendants who have
19 received notices, my cell number is
20 281-935-8223. You have my email address.
21 Please contact me and provide me with mutually
22 convenient dates when you are available. I will
23 notify other parties of that process, but we had
24 the meet and confer, and it failed.

25 So now I am in a circumstance